IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3145 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO. LTD.

Versus

VITTHAL LAXMANBHAI RABARI

Appearance:

MR RK MISHRA for Appellant

MR JV JAPEE for Respondent No. 1

MS NIRALI B MUNSHI for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 18/12/2001

ORAL JUDGEMENT

Heard Mr.R.K.Mishra, learned advocate appearing on behalf of the appellant, Mr.J.V.Japee, learned advocate appearing on behalf of the respondent No.1 and

Ms.N.V.Munshi, learned advocate appearing on behalf of the respondent No.2.

2. Considering the order passed earlier and while considering the application of the appellant - Insurance Company being Civil Application No.12298 of 2001, this Court has called for the record and proceedings of the trial Court. This Appeal as well as other connected appeals were admitted. The Civil Application No.12298 of 2001 was filed by the appellant - Insurance Company seeking direction of this Court, by highlighting the fact that the same has met with an accident earlier more than five times within a span of six months and the scooter in question belonged to one employee of the Court. In short, the applicant has sought for necessary direction to investigate such fraud. It is also found from the documents attached to the application that the Insurance Company has submitted an application to the Tribunal highlighting this fact and copy of which was also submitted to the vigilance cell of this Court. The vigilance cell is examining the case. I have considered the record and proceedings of the trial Court and stand taken by the respondent - claimant, wherein even the advocate who appeared for the respondent under the instruction from his client has also agreed for setting aside the order passed by the Tribunal under Section 140 of the Motor Vehicles Act. Accordingly this Court has perused the record and on going through the order passed by the Tribunal, I have to observe as under:

3. The respondent - claimant has filed claim petition before the Motor Accident Claims tribunal, Himmatnagar claiming for Rs.1,50,000/-- by way of compensation, from the opponent - driver and the owner of the scooter and the Insurance Company. It is the case of the claimant that he met with an accident on 1st April, 1999 at 2:00 P.M., Near Sudasana Patia, Valasana - Ider Road. The scooter was bearing No.GJ-9-D-8928. The claimant had also relied upon the documentary evidence namely, FIR, which was filed against the driver of the scooter on the date when the accident was occurred and panchnama of the scenes incident as well as the disability certificate issued showing the disablement. The application was registered being Motor Accident Claims Petition No.812 of 1999 on 24th May, 1999. On the very same day, the claimant had also through advocate filed an application under Section 140 of the Motor Vehicles Act claiming for Rs.25,000/- on no fault liability. It is further found from the record that the application was filed by the claimant under Order-33 of the Civil Procedure Code and the Tribunal has granted

permission subject to objection by issuing the notice to the District government Pleader, while passing the order on 24th May, 1999. As found from the record, the claimant has also submitted an application before the Tribunal under his thumb impression through his advocate on 28th August, 2000. However, considering injury sustained by him, it is not possible for him to get compensation of Rs.1,000/-. Accordingly, the application was made for reduction of the claim from Rs.1,50,000/-to Rs.25,000/--. The said application was fixed for hearing. It is found from the record that the claimant, under thumb impression, through advocate, has submitted an application on 28h August, 2000 wherein request was made that on technical reasons he may be permitted to withdraw his claim petition. That application was also kept by the member of the Tribunal for hearing. It is found from the record that the Tribunal has, as per the order dated 26th September, 2000 disposed of both the applications at Exh.17 and 18 in Motor Accident Claims Petition No.812 of 1999, by rejecting the same by referring a decision in the case of Ravindra S. Patel V. D.M.Rathod, reported in 1998 (1) GLH (16) 28 and the claimant was directed to pay Court Fees on the claim amount of Rs.1,50,000/-- by granting one month time. Considering the common order passed by the Tribunal, the Tribunal has not accepted the request made by the claimant for withdrawal of his claim application, which was submitted at Exh.18. On 1st November, 2000 a purshis Exh.19 was filed disclosing that they are affixing the Court Fees of Rs.1,900/-- on the claim. The appellant Insurance Company has challenged the order passed by the Tribunal dated 7th May, 2001 below Exh.3 and 23 in Motor Accident Claims Petition No.812 of 1999. Under the said order, the Tribunal has allowed the application of the respondent - claimant at Exh.3 filed under Section 140 of the Motor Vehicles Act under no fault liability by directing the opponents to deposit the sum of Rs.25,000/-by awarding interest at the rate of 9% P.A. from the date of the application within a period of one month from the date of the order and further passed an order that the direction will be issued for the disbursement of the amount to be paid to the claimant later on.

4. Mr.Mishra, learned advocate for the appellant has vehemently urged that the Tribunal has committed an error in rejecting the application of the claimant wherein the claimant had requested by filing purshis for withdrawal of his claim petition and further that the learned Tribunal has committed an error by allowing the application at Exh.3 filed by the claimant under no fault

liability. As observed earlier, it is true that the that point of time, the application was submitted by the claimant under thumb impression through his advocate and requested for withdrawal of the claim petition and another application was filed prying that hiss claim may be reduced from Rs.1,50,000/-- to Rs.25,000/--. It is true that the Insurance Company has not challenged the order passed earlier on application for seeking permission to withdraw the claim petition as well as reduction of the claim. However, the Tribunal has allowed the applications Exh.3 and 23 under no fault liability. The Tribunal has awarded Rs.25,000/-- with interest at the rate of 9% P.A. against the respondent claimant. It is also the case of the Insurance Company that the scooter involved in the accident was involved in other accidents for more than five times prior to the present accident and the scooter belonged to one of the employees of the Court and in respect of each accident, which was occurred on different days, four to five petitions are pending before the Tribunal.

5. Mr.J.V.Japee, learned advocate appearing on behalf of the contesting opponent under the instruction from his client has requested that the interim order passed by the Tribunal may be set aside. However, he requests that he shall be granted liberty to prove his case for compensation.

6. In view of the circumstances and without observing anything about the order passed by the Tribunal, this Court is inclined to allow this Appeal and set aside the order of the Tribunal. Accordingly, the order passed by the Tribunal below Exh.3 and 23 are hereby set aside. The Tribunal is directed to examine the main claim petition filed by the claimant, which is pending before the Tribunal being Motor Accident Claims Petition No.812 of 1999 and decide the same in accordance with law.

7. In view of the order passed in the appeal, the appellant has deposited a sum of Rs.12,500/-- before this Court. In view of the above order passed by this Court, the Registry is directed to transmit the amount of Rs.12,500/-, which is deposited by the appellant before this Court to the Tribunal. The Insurance Company is also entitled to get back that amount and the Tribunal shall pass appropriate order accordingly. The office is also directed to send back the record and proceedings to the Tribunal. The appeal is accordingly allowed. There shall be no order as to costs.

(D.K.Trivedi,J.)

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